

EXHIBIT 7

Filed Under Seal

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GOOGLE LLC,

Plaintiff,

vs.

No. 3:20-cv-06754

SONOS, INC.,

Defendant.

_____/

-- ATTORNEYS' EYES ONLY --

VIDEO-RECORDED DEPOSITION OF JAMES MALACKOWSKI

REMOTE ZOOM PROCEEDING

New Buffalo, Michigan

Friday, August 26, 2022

REPORTED BY:

LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

Job No. CS5367688

1 functionality, as I just described, yes.

2 Q. But the IFTTT app doesn't actually practice the
3 '885 patent; correct?

4 A. Correct. As I described in my report, there are
5 other benefits to the '885, most notably this synchronous
6 play that is not addressed in the IFTTT app.

7 Q. Let's take a look at that. I think it's page
8 55. No, it's not 55. Hold on. Page 66.

9 A. I have 66.

10 Q. So on page 66, I think this is what you were
11 referring to, but in the portion where you're quoting
12 Dr. Almeroth's report, you note in that last paragraph of
13 the indented text that, "the IFTTT applets do not perform
14 each and every limitation of claim 1 of the '885 Patent
15 and do not provide the full scope of advantages explained
16 above"; correct?

17 A. Correct. And then I go on to explain a
18 non-limiting example being the synchronous playback.

19 Q. Have you attempted to calculate the value of the
20 '885 invention as compared to the IFTTT app?

21 A. Well, we know the value of the IFTTT app,
22 because it's priced for the public to see. We know the
23 value of the invention in part utilizing that as a
24 reference point, because it's the conclusion of my
25 analysis, so I would just compare those two data points.

1 Q. But in your analysis, you adjusted the price of
2 the IFTTT app down to get to the conclusion of your
3 Georgia-Pacific analysis; correct?

4 A. Correct. Taking into account the larger set of
5 parameters under the hypothetical negotiation.

6 Q. So for these features that you describe as being
7 missing from the IFTTT app, the, you know, ability to
8 provide synchronous audio playback, et cetera, have you
9 attempted to create the value of those aspects of the
10 '885 patent?

11 A. They are not reflected in the quantitative
12 metric that we're discussing here, and so the royalty is
13 highly conservative for that reason.

14 Q. Is the functionality that the IFTTT app provides
15 similar to what's in the prior art?

16 A. I can't say without a specific example of what
17 art you're referring to. I don't draw that conclusion.

18 Q. Did you discuss that with Dr. Almeroth?

19 A. No.

20 Q. The aspects of the '885 patent that are not
21 included in the IFTTT app, those are important features
22 of the '885 invention; correct?

23 A. I don't rank order their importance, but I do
24 agree that they are valuable features and that the
25 approach I used does not account for them.

1 Q. Your understanding that the IFTTT app is
2 technically comparable to the '885 patent is based on the
3 opinion of Dr. Almeroth; correct?

4 A. In part. I obviously also understand it can
5 affect similar functionality for users, but ultimately,
6 I'm relying upon the technical expert.

7 Q. Aside from the people on your team or people you
8 know who are associated with this case, for example
9 Sonos' lawyers, do you know anyone else who has used the
10 IFTTT app to practice functionality that's comparable to
11 the '885 patent?

12 A. You asked me that before. I don't know anyone
13 else who's utilized the IFTTT app. That said, I would
14 not expect to find a lot of people who've used it for
15 that purpose, because that purpose or functionality is
16 incorporated into the Sonos product and is incorporated
17 into, through the infringement, the Google products.

18 So for example, when the Defendant's damages
19 expert talks about there being low use of the IFTTT app
20 for a similar purpose, well, of course, there is, because
21 Sonos is using it under their invention, and Google's
22 using it by infringing.

23 Q. But there may be people with other speakers who
24 want to group other speakers in this way; correct?

25 A. There may be.

1 Q. Are you aware of anyone else using the IFTTT app
2 in a way that is comparable to the '885 patent?

3 A. Not personally, no.

4 Q. Have you or your team looked for any reviews of
5 the IFTTT app that mention grouping speakers in this
6 fashion?

7 A. I've seen reviews of the IFTTT app, both print
8 and video. I don't recall reference to grouping speakers
9 as it relates to the issues in this case. Most of the
10 promotional work is related to the pre-engineered apps,
11 as you showed me, for example, on Exhibit 1195.

12 Q. In any of the reviews of the IFTTT app, have you
13 seen references to using the IFTTT app to create zone
14 scenes?

15 A. Not specifically, but obviously, there are
16 references with respect to IFTTT for Sonos and speaker
17 use and selection. I don't recall anything in the
18 advertisement.

19 I mean, I would just note Exhibit 1195, which is
20 the one that you showed me, which is the IFTTT promotion
21 of Sonos, says in its very first descriptive sentence
22 that, you know, it allows you to fill as many rooms as
23 you want with great-sounding music.

24 Q. But to your point, because Sonos let's you group
25 speakers natively within the Sonos app, nobody would use

1 IFTTT to group Sonos speakers; correct?

2 A. Not Sonos only, no. You could use IFTTT to play
3 Sonos and other brands of speakers.

4 MS. COOPER: I'm introducing another exhibit,
5 1196.

6 (Exhibit 1196, Screenshot, IFTTT website, marked
7 for identification electronically by counsel.)

8 THE WITNESS: I have it.

9 Q. BY MS. COOPER: Okay. Have you visited the
10 IFTTT website?

11 A. I have.

12 Q. Have you visited this page?

13 A. I -- I don't recall. I looked generally through
14 the entirety of the site, so -- and obviously, the
15 content on a lot of the pages is shockingly similar, so
16 this looks familiar, but I don't recall the specific
17 page, top of mind.

18 Q. I would agree with you there.

19 The IFTTT app can do things besides group
20 speakers; correct?

21 A. Of course.

22 Q. In fact, part of the beauty of the app is that
23 it can be used to do almost anything; correct?

24 A. It's proclaimed to do such. I don't know about
25 almost anything, but it has a wide variety of

1 functionality.

2 Q. On this page, IFTTT claims -- and I'm at the top
3 under, "What is IFTTT?" IFTTT claims that it is the best
4 way to integrate apps, devices and services.

5 Do you see that?

6 A. I do.

7 Q. And it says, "We help devices, services, and
8 apps work together in new and powerful ways."

9 Do you see that?

10 A. I do.

11 Q. And under "What can IFTTT do," the company
12 claims, "To put it simply, IFTTT can do anything!"

13 Do you see that?

14 A. I think we just made reference to that a few
15 minutes ago, that that's a marketing claim that is
16 probably overly broad, but speaks to its functionality.

17 Q. Further down in the middle of page 2 there's a
18 selection of four squares, and these are examples of
19 applets, preconfigured applets presumably, that you can
20 use IFTTT for.

21 Do you see this?

22 A. I do. The second one is the weather forecasting
23 that I use every day.

24 Q. One of the applets, the one in the top left
25 corner, is, "Get a notification when the international

1 A. Correct.

2 Q. At the time, the Standard plan allowed users to
3 turn on unlimited applets; correct?

4 A. Correct.

5 Q. And that was free; correct?

6 A. Right. You could use the unlimited applets to
7 create three applet functionalities. Not what's
8 necessary to recreate the '885, though, and that's
9 another misunderstanding that Defendant's damage expert
10 has. You cannot recreate the functionality without using
11 the Pro option.

12 Q. Have you tested the Standard subscription that
13 existed as of September 2020?

14 A. As I said, obviously I didn't test it in
15 September 2020. We've tested the standard subscription,
16 and when you go to do IFTTT this, then that, and then,
17 you need that second step. It tells you to subscribe to
18 the Pro plan.

19 Q. Did you look for old versions of the IFTTT app
20 that were dated around the time of the hypothetical
21 negotiation?

22 A. No. I don't think they would be relevant even
23 if you had them. At the time of the hypothetical, there
24 were subscription plans in place, and the term of the
25 hypothetical would be looking forward, not backward, so

1 create functionality comparable to the '885; correct?

2 A. Pro or Pro+.

3 Q. Fair enough.

4 And as of November 2020, the Pro plan was -- I
5 think it was 3.99 per month; is that right?

6 A. There were a number of pricing subscriptions. I
7 think the lowest price was 3.99.

8 Q. That's right. Users could set their price to
9 one of four options, 3.99, 5.99, 9.99 or custom?

10 A. With certain minimum to the custom, correct.

11 Q. So as of November 2020, a user could have access
12 to the Pro subscription for as little as 1.99 per month,
13 if they chose the custom field?

14 A. That's ultimately what I factored into my
15 analysis, yes.

16 Q. And you note on page 68 that as of June 2022,
17 IFTTT still offers the same three plans at the same price
18 point?

19 A. Yes.

20 Q. And the pricing as of June 2022 is reflected in
21 Figure 25. It looks like the free version allows you to
22 have access to 5 applets and is free; Pro version \$5 a
23 month, 20 applets; IFTTT version Pro+ \$10 per month,
24 unlimited applets; correct?

25 A. Correct, with the critical distinction being the